

Application No. 10/696,391  
Amendment dated January 12, 2006  
Reply to Office Action of May 17, 2005

Docket No.: 47624CIP(71417)

### REMARKS

Claims 49-68 are currently pending and under examination. The Examiner rejects Applicants' priority claim to U.S. provisional application 60/077,262 and U.S. utility application 09/265,041 with respect to all of the pending claims. The Examiner rejects Applicants' priority claim to U.S.S.N. 60/077,262 with respect to claims 49-65 and 68. The Examiner objects to claims 67 and 68. Claims 58 and 59 stand rejected under 35 U.S.C. 112, second paragraph; claims 49, 52-56, 60-66, and 68 stand rejected under 35 U.S.C. 102(b); and claims 49-51, 57-59, 66, and 67 stand rejected under 35 U.S.C. 103(a). The present submission amends claims 49, 58, and 68; cancels claims 53, 66 and 67.

#### **Support for the Amendment**

Support for the amendments is found throughout the specification and claims as originally filed. In particular, support for the amendment of claim 49, which now recites "increasing the frequency of endothelial progenitor cells (EPC)" is found, for example, at claim 53; support for the amendment of claim 49, which now recites "monitoring a cardiac function by echocardiography, ventricular end-diastolic dimension (LVEDD), end-systolic dimension (LVESD), fractional shortening (FS), wall motion score index (WMSI), electromechanical mapping with a NOGA system, cardiac angiography or LV systolic pressure (LVSP)" is found at claim 67 as originally filed and at page 54, lines 12 and 13.

No new matter has been added. The amendment of the claims is made to expedite prosecution. Applicants reserve the right to pursue all canceled subject matter in a continuation or divisional application.

#### **Rejection of Priority Claims**

The Examiner indicates that pending claims 49-68 are not entitled to the priority dates of U.S. Serial No. 60/077,262, filed on March 9, 1998, and U.S. Serial No. 09/265,041, filed on March 9, 1999, now issued as U.S. Patent No. 6,676,937, but instead are only entitled to the filing date of the continuation-in-part application, i.e., October 28, 2003.

While Applicants respectfully disagree with this position, it is moot in view of the amendments.

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### **Claim Objections**

The Examiner's objection to claim 67 for reciting the term "NOGA" is rendered moot by the cancellation of that claim. With respect to claim 49, which has been amended to include the language of claim 67, Applicants note that the term "NOGA" is not an abbreviation, but an accepted tradename. In view of the Examiner's objection, claim 49 now recites "electromechanical mapping with a NOGA system."

The Examiner's objection to claim 68 is overcome by the present amendment, which corrects a typographical error.

### **Rejection under 35 U.S.C. § 112, second paragraph**

The rejection of claims 58 and 59 under 35 U.S.C. § 112, second paragraph, for indefiniteness is overcome by the present amendment, which deletes the phrase "such as."

### **Rejection under 35 U.S.C. § 102(b)**

Claims 49, 52-56, 60-66, and 68, which are directed to methods for inducing new blood vessel growth, are rejected under 35 U.S.C. § 102(b) as anticipated by Isner et al., WO 97/14307 (hereinafter "Isner"). While Applicants disagree with the position taken by the Examiner, this rejection is overcome by the present amendment. The method now requires the step of monitoring cardiac function by echocardiography, ventricular end-diastolic dimension (lvedd), end-systolic dimension (lvesd), fractional shortening (fs), wall motion score index (wmsi), noga, cardiac angiography or lv systolic pressure (lvsp). The reference, as relied on by the Examiner, fails to teach the specific steps as claimed. Thus, the rejection of the amended claims over Isner should be withdrawn.

### **Rejection under 35 U.S.C. § 103(a)**

The Examiner rejects claims 49, 58, and 59 as obvious over Isner in view of Hammond et al. (U.S. Patent No. 5,880,090). While Applicants respectfully disagree with the rejection, the present amendment of claim 49 includes language from claim 67, which was not rejected for obviousness. The amended claims now require the step of monitoring cardiac function by echocardiography, LVEDD, LVESD, FS, WMSI, NOGA, cardiac angiography or LVSP. The

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cited references do not teach or suggest the method as presently claimed. Accordingly, the present rejection should be withdrawn.

Claims 49, 66, and 67 were rejected as obvious over Isner in view of Dillman et al. (U.S. Patent No. 6,605,274, hereafter "Dillman"). While Applicants respectfully disagree with the rejection, the present amendment to claim 49 includes language from claim 53, which was not rejected for obviousness. The claims now require that the methods increase the frequency of endothelial progenitor cells (EPC) in the mammal. The cited references do not teach or suggest the method as presently claimed. Thus, the obviousness rejection over Isner and Dillman should be withdrawn.

Claims 49, 50, 51, and 57 were rejected as obvious over Isner in view of Takeshita et al., (J. Clin. Invest. 93:662-670, 1994; hereafter "Takeshita."). While Applicants respectfully disagree with the rejection, the present amendment to claim 49 includes language from claim 67, which was not rejected for obviousness. The amended claims now require the step of monitoring cardiac function by echocardiography, LVEDD, LVEDS, FS, WMSI, NOGA, cardiac angiography or LVSP. The cited references do not teach or suggest the method as presently claimed. Thus, this basis for the obviousness rejection over Isner and Takeshita should also be withdrawn.

#### **Obviousness-type double patenting**

Claims 49, 52-56, 58-65, and 68 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting in view of claims 49-66 over copending Application No. 10/714,574 (hereafter "the '574 application"). In view of the present amendment, the instant claims are distinct and distinguishable from those of claims 49-66 of the '574 application. Thus, this rejection should also be withdrawn.

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**CONCLUSION**

In view of the above remarks, Applicants believe the pending application is in condition for allowance. If the Examiner disagrees, then a telephonic interview to discuss this case is respectfully requested.

The USPTO is hereby authorized to charge or credit any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our deposit account 04-1104.

Dated: January 12, 2006

Respectfully submitted,

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